IN THE HIGH COURT OF DELHI

Crl. M.C. No.5392/2005

Nicholas Piramal India Ltd. ..... Petitioner
! through: Mr. Siddharth Luthra, Sr. Adv with Mr.Sandeep Kapur and Mr.Rachna Midha, Advocate

VERSUS

$ S. Sundaranayagam ..... Respondent
^ through: Mr. Anil Soni, Adv. for the State.

RESERVED ON: 20.08.2007

% DATE OF DECISION: 23.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioner, Nicholas Piramal India Ltd., arrayed as accused No.5 in the complaint lodged by the respondent under Section 18(a)(i) read with Section 27(c), Drugs and Cosmetics Act, 1940 seeks quashing of the summoning order dated 18.12.2003.

2. Facts in brief are that on 21.9.2000, a sample of drug known as Erythromycin Estolate Oral Suspension USP (60 ml), batch No.1028, with manufacturing date August, 2000 and expiry date November, 2002 was collected by the Drug Inspector (complainant) from the premises of Sarvanand

Hospital in the presence of the proprietor of the hospital.

3. On 21.9.2000, one sealed sample portion of the said drug was forwarded to the Government Analyst, Central Indian Pharmacopocia Laboratoray, Ghaziabad, U.P.

4. On analysis the sample of the drug was found to be not of standard quality.

5. The manufacturing firm in its letter dated 7.11.2001 stated that it did not accept the Government Analyst's report and intend to adduce evidence in controversion of Government Analyst's report as provided under Section 25(3) of the Act and requested that sample be sent to Central Drugs Laboratory, Kolkata for re-testing.

6. On re-testing by Central Drugs Laboratory, Kolkata, sample was again declared to be not of standard quality.

7. Investigation conducted by the complainant revealed that the said drug was manufactured by M/s. Biodeal Laboratories for M/s. Rhone-Poulene (India) Ltd. Investigation further revealed that pursuant to orders of the Hon'ble High Court of Bombay, on 27.9.2001, M/s. Rhone-Poulene (India) Ltd. was amalgamated with Nicholas Piramal India Ltd.

8. On completion of the investigation, complainant lodged a complaint with the learned Metropolitan Magistrate impleading following persons as accused :-

(i) Neil Goodes ..... Managing Director, M/s. Rhone- Poulene India (Ltd.).

(ii) Jayant Chimanlal Jani ..... Deputy Managing Director, M/s. Rhone-Poulene (India) Ltd.

(iii) J.P.Pandit ..... Supervisory Chemist, M/s. Rhone-Poulene (India) Ltd.

(iv) J.V.Vagle ..... Supervisory Chemist, M/s. Rhone-Poulene (India) Ltd.

(v) M/s. Nicholas Piramal India Ltd. ..... Through its Director, Ajay G. Piramal

(vi) Thobhan Bhai Kurji Patel ..... Managing Director, M/s. Biodeal Laboratories Pvt. Ltd.

(vii) M/s. Biodeal Laboratories Pvt. Ltd. ..... Through its Managing Director, Thobhan Bhai Kurji Patel

8. Vide order dated 18.12.03, learned MM summoned the accused persons to face trial in the complaint. Same reads as under:

> "8.12.2003
>
> Present: DI in person
>
> I have heard DI/Complainant in person and have perused the record. I take cognizance of the offence. Since the Complainant is public servant his statement is dispensed with. Issue summons of the complaint to the accused persons for 3.5.2004.
>
> MM, Delhi
> 8.12.2003"

9. Learned senior counsel for the petitioner submitted that the summoning order is based on non-application of

judicial mind by the learned Metropolitan Magistrate. He further submitted that learned Metropolitan Magistrate failed to note that M/s. Rhone-Poulene (India) Ltd. and Nicholas Piramal India Ltd. are two different companies. That the effect of amalgamation between the 2 companies is that M/s.Rhone-Poulene (India) Ltd. is no longer in existence. That since the offence was committed by M/s. Rhone-Poulene (India) Ltd. (transferor company), petitioner which is an entity seperate from transferor company cannot be prosecuted for the said offence.

10. Per contra, learned counsel for the State contended that petitioner is liable to be tried for the offence as it has taken over all the assets and liabilities of the firm M/s.Rhone-Poulene (India) Ltd. In support of his contention, counsel relied upon clause 8 of scheme of arrangement between the 2 companies. Said clause reads as under:-

> "8. LEGAL PROCEEDINGS
>
> All suits, actions and proceedings of whatsoever nature by or against RPIL, NFL (except in relation to the assets and liabilities specified in Schedule A to the Scheme) and SPL pending and/or arising on or before the Effective Date relating to their respective Undertaking (as defined), including the assets and liabilities referred to in 3.1 and 3.2 hereof, shall neither abate nor shall in any way of prejudicially affected by reason of of said Undertaking, assets and liabilities of RPIL, NFL and SPL having finally stood transferred and vested in

> NPIL as provided under this scheme but the same shall be continued and be enforced by and/or against NPIL as effectually as if the same has been pending and/or arising against NPIL."

11. A company which has complied with the requirement relating to incorporation of companies contained in Companies Act is a legal entity separate and distinct from the individual members of the company as held by the House of Lords in *Salomon vs. Salomon & Co.Ltd.* (1895-1899) All England Reports 33.

12. In the decision reported as *In Re: Walker's Settlement* (1935) 1 Ch.D.567, 'amalgamation' was defined as under:-

> "The word 'amalgamation' has no definite legal meaning. It contemplates a state of things under which 2 companies are so joined as to form a third entity or one company is absorbed into and blended with another company."

13. In the decision reported as *Nokes vs. Doncaster* (1940) 3 All E.R. 549, it was held that a contract of personal service previously existing between an individual and the transferor company, does not automatically becomes a contract between the individual and the transferee company. With reference to Section 154 of the English Companies Act 1929, it was opined as under:-

> "Section 154 contemplates – or, at any rate, provide for – the dissolution of the transferor company when the transfer of its undertaking has been made, and there appears to be no means of calling back to life the company so

dissolved."

14. In the decision reported as *In Re: Skinner* (1958) 3 All E.R. 273, it was opined as under:-

> ".....schemes and orders made by virtue of Section 206 and Section 208 of the Companies Act 1948 can only transfer such rights, powers, duties and property as are capable of being lawfully transferred by a party to the scheme if no such sections of the Companies Act existed. It is not necessary in a scheme to exclude specifically from its operation things incapable of such transfer as general words in the scheme and any order in furtherance must be taken to operate in a manner not to repugnant to the general law of England."

15. In the decision reported as *Oklahoma Natural Gas Co. vs. State of Oklahoma* 273 US 257 (1927), Supreme Court of United States observed as under:-

> "There is no specific provision in our rules for the substitution as a party litigant of a successor to a dissolved corporation. It is well settled that a common law and in the federal jurisdiction a corporation which is being dissolved is as if it did not exit, and the result of the dissolution cannot be distinguished from the death of the natural person in its effect. ..... It follows, therefore, that as the death of natural person abates all pending litigation to which the corporation is appearing either as a plaintiff or defendant. To allow actions to continue would be to continue the existence of the corporation pro hac vice. But corporations exist for specific purposes, and only by legislative act, so that if the life of the corporation is to continue even only for litigating purposes it is necessary that there should be some statutory authority for the prolongation.

16. In the decision reported as *American Exch. Bank vs.*

Mitchell, 179 III. App.612, 615, 616, it was held that after a corporation is dissolved, it is incapable of maintaining an action; and that all such actions pending at the time of dissolution abate, in the absence of a statute to the contrary.

17. In the decision reported as *M/s.General Radio and Appliances Co. Ltd. vs. M.A.Khader (dead) by LR's* (1986) 2 SCC 656, the effect of amalgamation of 2 companies was considered by the Hon'ble Supreme Court. It was held that after the amalgamation of the 2 companies the transferor company ceases to have any entity and the amalgamated company acquires a new status and it is not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets.

18. In para 6 of the decision reported as *Saraswati Industrial Syndicate Ltd. vs. CIT, Haryana, H.P. & Delhi*, AIR 1991 SC 70, Supreme Court observed as under:-

> "The true effect and character of the amalgamation largely depends on the terms and scheme of merger but there can be any doubt that when 2 companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective."

19. The legal position which emerges from afore-noted

judicial decisions is that upon an amalgamation between two companies, the transferor company dies a civil death and the entity which has evolved upon amalgamation cannot be prosecuted for an offence committed by the transferor company. To the same effect are the observations of the High Court of Himachal Pradesh in the unreported decision in Crl. Rev. No. 150/1994 *M/s. Brooke Bond Lipton (India) Ltd. & Anr. Vs. State of H.P. & Anr.* decided on 24.3.1995.

20. So far as clause 8 relied upon by the counsel for the State is concerned, same relates to transfer of legal proceedings. The clause does not contemplate that criminal liability for offence committed by the earlier company would be transferable to the petitioner company.

21. Noting that the petitioner company came into picture on 27.9.2001, after the date of manufacture of the said drug in year 2000, I hold that it cannot be prosecuted for the said offence.

22. Order dated 18.12.2003 summoning the petitioner to face trial in the complaint in question is quashed.

23. No costs.

August 23, 2007 PRADEEP NANDRAJOG, J.
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